

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL JOSEPH BRADY,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

NO. C11-6020 RJB/KLS

ORDER LIFTING STAY AND  
DEFERRING RULING ON  
MOTION TO AMEND

Before the Court are Petitioner Michael Joseph Brady's motion to lift stay (ECF NO. 20) and to amend his habeas petition. ECF No. 21. Petitioner seeks to add two additional claims to his habeas petition, which presently list 34 habeas claims. *Id.* Respondent asks that the Court defer ruling on Mr. Brady's motion to amend until she has had an opportunity to completely review Mr. Brady's petition. Respondent also asks for additional time to file her answer. ECF No. 23.

**STATEMENT OF CASE**

Mr. Brady filed a federal habeas corpus petition in this Court. ECF No. 1. He also filed a motion for stay and abeyance of his petition. See ECF No. 9. Respondent filed a response opposing Mr. Brady's motion to stay, as well as a motion to dismiss his petition without prejudice. ECF No. 10. On March 6, 2012, this Court issued an Order directing the parties to submit further briefing in the case. ECF No. 12. The Court specifically directed the parties to provide further information relating to (1) the status of Mr. Brady's pending personal restraint petitions that challenged his state court convictions; (2) Mr. Brady's deadline to file

1 his federal habeas petition; and (3) the status of the Washington State courts' determination of  
2 the timeliness of his personal restraint petitions. See ECF No. 12, at 1. Mr. Brady and  
3 Respondent submitted a response to the Court's Order. ECF Nos. 13 and 14. The Court  
4 subsequently granted a stay in Mr. Brady's case, denied the Respondent's motion to dismiss,  
5 and directed Mr. Brady to file status reports as to the pendency of his pending state court cases  
6 in Cause Nos. 86589-2, 86640-6, and 86856-5. See ECF No. 15. Mr. Brady filed the requisite  
7 status reports and relevant certificates of finality. ECF Nos. 16-20 and 22. His last status  
8 report noted that a certificate of finality has now been issued as to his last pending state  
9 petition, in Washington Supreme Court Cause No. 86856-5. ECF No. 20.

11 Mr. Brady also seeks to amend his habeas petition, which already listed 34 habeas  
12 claims, and seeks to add two additional claims, Claims 35 and 36. ECF No. 21. Respondent  
13 does not object to lifting the stay, but asks that the Court defer ruling on the motion to amend  
14 until she has had a complete opportunity to thoroughly review the entirety of Mr. Brady's  
15 petition, what appears to be his 11 state court personal restraint petitions, and his proposed  
16 Claims 35 and 36 in relation to the rulings issued by the State courts as to those proposed  
17 claims. ECF No. 23. Respondent proposes to address the motion to amend in her answer; if  
18 Respondent takes the position that it should be denied, she will discuss her position as to why  
19 denial is appropriate. If Respondent agrees that the motion should be granted, she will address  
20 the proposed Claims 35 and 36 as is appropriate. Respondent also requests additional time to  
21 prepare her answer to the habeas petition.

24 Given the present length of the habeas petition, the Court finds Respondent's request  
25 for additional time to be reasonable. The Court also finds it reasonable to defer ruling on Mr.  
26

1 Brady's motion to amend as there will be no prejudice to Mr. Brady. He will have an  
2 opportunity to fully respond to Respondent's answer, in which Respondent will address the  
3 motion to amend. Accordingly, it is **ORDERED**:

4 (1) Petitioner's motion to lift the stay (ECF No. 20) is **GRANTED**.

5 (2) The Court shall defer ruling on Petitioner's motion to amend the petition (ECF  
6 No. 21) and the Clerk is directed to remove this motion from the Court's calendar. Respondent  
7 is directed to address in the answer whether Mr. Brady's motion to amend should be granted or  
8 denied. If the Respondent agrees that the motion should be granted, her answer shall address  
9 the proposed Claims 35 and 36.  
10

11 (3) Respondent's answer shall be due **on or before March 1, 2013**.

12 (4) The Clerk shall send copies of this Order to Petitioner and counsel for  
13 Respondent.  
14

15 **DATED** this 30th of November, 2012.  
16

17  
18 

19 Karen L. Strombom  
20 United States Magistrate Judge  
21  
22  
23  
24  
25  
26